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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,837	03/06/2006	Danny Blanchard	00846-23343.PCT.US	8781
20551 7590 04/15/2009 THORPE NORTH & WESTERN, LLP. P.O. Box 1219 SANDY, UT 84091-1219				
EXAMINER				
VERDIER, CHRISTOPHER M				
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3745				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/570,837

Applicant(s)

BLANCHARD ET AL.

Examiner

Christopher Verdier

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2007 and 15 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 15, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 is/are allowed.
- 6) ☒ Claim(s) 1-7, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicant's Amendment dated January 15, 2009 and Applicant's Remarks dated December 7, 2007 have been carefully considered but are non-persuasive. Applicant's corrections to the claims, drawings, and specification where appropriate are noted with appreciation.

Applicant's argument that the disc surface with a random surface roughness (claim 2), the disc surface with a patterned surface roughness (claim 2), the opposing rotatable disc surfaces having the same surface roughness (claim 5), the opposing rotatable disc surfaces having different surface roughnesses (claim 5), the opposing rotatable disc surfaces being non-parallel (claim 5), at least one of the rotatable disc surfaces being non-planar (claim 5), the opposing rotatable disc surfaces being non-planar (claim 5), and the discs being different diameters (claim 5), are shown in the drawings by reference character 48 to show a patterned or random surface roughness, in the specification at page 8, lines 9-14, and in figures 1a, 2a, 2b, 2c, 2d, and 3h, that page 11, lines 6-10 describe opposing disc surfaces having the same or different surface roughnesses, parallel or non-parallel surfaces, planar or non-planar surfaces, and the same or differing diameters, that page 11, lines 6 and 8 have been amended to clarify that the disc surfaces described therein are in fact the opposing disc surfaces indicated by reference characters "48h and 48i" in FIG. 1b, and that FIG. 1b has been amended so that the opposing disc surfaces are correctly indicated by reference characters "48h" and "48i", are not persuasive. The drawings do not show these features. Although the specification describes these features, the features are not shown in the drawings.

Applicant's claim for priority is noted, however the first sentence of the specification must be amended to state that priority is claimed under 35 U.S.C. 119(c) based on Provisional Applications No. 60/500,041 and 60/500,208. As set forth in the first Office action, Applicant is still required to submit the reference in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

Applicant's new Declaration dated December 7, 2007 is appreciated, but is defective for the reason set forth later below. The new abstract still contains the legal term "means". Claim 5 still contains indefinite claim language as set forth in the first Office action.

Applicant's arguments that the amended claims define over the previously applied references are persuasive.

Election/Restrictions

Applicant's election without traverse of species 9, in the reply filed on January 15, 2009 is acknowledged.

Claim 1 contains allowable subject matter. The restriction requirement between the different species, as set forth in the Office action mailed on July 29, 2008, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 2 and 5, directed to the disc surface features recited

therein, are not withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The Declaration filed December 7, 2007 lists the incorrect filing date; the filing date should be March 3, 2006.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the disc surface with a random

surface roughness (claim 2), the disc surface with a patterned surface roughness (claim 2), the opposing rotatable disc surfaces having the same surface roughness (claim 5), the opposing rotatable disc surfaces having different surface roughnesses (claim 5), the opposing rotatable disc surfaces being non-parallel (claim 5), at least one of the rotatable disc surfaces being non-planar (claim 5), the opposing rotatable disc surfaces being non-planar (claim 5), the discs being different diameters (claim 5), the inlet and outlet passages being perpendicular to the disc surface (claim 6), and the inlet and outlet passages being inclined to the disc surface (claim 6), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 1a show(s) modified forms of construction in the same view (the inlet and outlet channels being perpendicular as indicated in dashed lines in figure 1a, or inclined as indicated in dashed lines in figure 1a). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because it contains the legal term “means” in line 1, which should not be used. Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities:

The paragraph at page 10, line 21, should not refer to the inlet and outlet channels being perpendicular as indicated in dashed lines in figure 1a, or inclined as indicated in dashed lines in figure 1a, for the reasons set forth above in the objection to the drawings.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 9, “a fluid” is a double recitation of the fluid in claim 1, lines 2-3. In claim 5, lines 12-13, “interconnected to rotate together at the same speed; rotatable at different speeds” is incomplete and unclear. In claim 23, line 2, “the shaft” lacks antecedent basis. In claim 23, line 2, “the at least one slot” lacks antecedent basis. In claim 24, line 2, “the shaft” lacks antecedent basis. In claim 24, lines 3-4, “the at least one slot” lacks antecedent basis.

Allowable Subject Matter

Claim 15 is allowed.

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claims 2-7 and 23-24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Verdier whose telephone number is (571) 272-4824. The examiner can normally be reached on Monday-Friday from 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward K. Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Christopher Verdier/
Primary Examiner, Art Unit 3745

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